

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2655 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SACHIN VIBHAG KILVANI MANDAL

Versus

SHRI B.C.YADAV,DEPUTY SECRERATY

Appearance:

MS MAMTA VYAS for Petitioner

MRS SIDDHI TALATI for Respondent No. 1, 2 & 3

MR VH DESAI for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/10/97

ORAL JUDGMENT

#. Rule. Mr.V.H.Desai and Mrs. Siddhi Talati, learned counsel for respondents waive service of Rule. The matter is taken up for final hearing on the request of learned counsel for the parties. Heard learned counsel for the parties.

#. The petitioner-school by this Special Civil Application is challenging the validity, correctness and propriety of the order of Deputy Secretary, Education Department, Government of Gujarat, dated 22.4.88 under which the respondent No.4 was ordered to be taken back in service.

#. The facts of the case in brief are that the respondent No.4 filed application No. 147 of 1981 before the Gujarat Secondary Education Tribunal at Ahmedabad and complaint has been made therein that though he was working as senior clerk in the school, he was not assigned any work by management. Prayer has been made for direction to the manager of the school and the principal to assign him work of senior clerk according to rules. On behalf of the school, principal was examined, who produced the papers to show that the applicant therein, the respondent No.4 herein had submitted his resignation from the services before the District Education Officer, Surat, which was forwarded by him to the management for doing needful in the matter. The resignation of the respondent No.4 was accepted on 1.8.82 by the managing committee and accordingly the District Education Officer was informed vide letter dated 2.8.82. Prior to the submission of resignation, the respondent No.4 was given promotion as head clerk. As the resignation of respondent No.4 has been duly accepted and as he was no longer in service of the school, and as nothing further was required to be done by the Tribunal, an order has been passed that the application does not survive and is disposed of with no order as to costs. Thereafter the learned counsel for respondent No.4 appeared before the Tribunal and he passed a Purshis praying therein for permission to withdraw the application in view of the fact that the applicant therein, the respondent No.4 herein was no longer in service of the school. Permission was granted and the application was dismissed as withdrawn. That order of the Tribunal passed on 21.1.83 was not challenged by the respondent No.4. Then comes another application No.101 of 1984. In this application, the respondent No.4 claimed that under the guise of allowing him to proceed on invalid pension a resignation was got written from him. There were five complaints against him in which he has now been acquitted. He further made a grievance that he had submitted an application of his resignation under the pressure of criminal complaint and as such, this application was by coercion and such applications have no effect in law and the management has accepted the resignation wrongfully and he continued in service. This application of respondent No.4 came to be rejected by the

Tribunal vide its order dated 7.2.86. The Tribunal specifically came to the conclusion that the applicant is no more in service and hence has no cause to file the application and the same has been dismissed. Third application has been filed by respondent No.4 being application No.243 of 1985 and again it has been held by the Tribunal that respondent No.4 is no more in service and he cannot claim part withdrawal of provident fund. Thereafter, it appears that the respondent No.4 approached to the Government and there the impugned order has been passed by the Deputy Secretary. The Deputy Secretary has taken a somersault to all earlier proceedings taken by respondent No.4 before the Tribunal and ignoring the findings of the Tribunal that the respondent No.4 is no more in service, nullifying the orders passed by the Tribunal directed the school to take him back in service. This is wholly arbitrary order passed by the State Government. The State Government has passed the order as if it is sitting as an appellate authority over the Tribunal which is a creature of the statute. Once the Tribunal has decided it to be a case of submission of resignation by the respondent No.1 and acceptance thereof by the petitioner, how far it was justified by the Government to give a finding that everything has been done illegally and arbitrarily. The first application which has been filed by respondent No.4 before the Tribunal being Application No.147 of 1981 is very important and relevant and therein the Tribunal has considered the case and held that the respondent No.4 has submitted his resignation and the same has been accepted. That application came to be rejected on the ground that he is no more in service and as such the same does not survive. However, another important fact has not been noticed by the Government that the counsel for respondent No.4 himself has accepted this position and he passed the Purshis for permission to withdraw the application and in view of that fact, the applicant, the respondent No.4 herein was no longer in service of the school. This application was ordered to be withdrawn. Next application of respondent No.4 is regarding complaint that resignation has been taken under coercion but that was also not accepted. In view of this finding of the Tribunal, the Government had no jurisdiction to take a different view as it is not sitting as appellate authority over the Tribunal.

#. In the result, this special Civil Application succeeds and the same is allowed. The orders/letters of respondent No.1, dated 22nd April 1988, annexure 'A' and annexure 'B' dated 30.4.88, are quashed and set aside. Rule made absolute. No order as to costs.

.....

(sunil)